

1-1 By: Nelson S.B. No. 152
 1-2 (In the Senate - Filed December 21, 2012; January 29, 2013,
 1-3 read first time and referred to Committee on Health and Human
 1-4 Services; March 13, 2013, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
 1-6 March 13, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Nelson	X			
1-9 Deuell	X			
1-10 Huffman			X	
1-11 Nichols	X			
1-12 Schwertner	X			
1-13 Taylor			X	
1-14 Uresti	X			
1-15 West	X			
1-16 Zaffirini	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 152 By: Nelson

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the protection and care of persons who are elderly or
 1-22 disabled or who are children.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subsection (b), Section 532.001, Health and
 1-25 Safety Code, is amended to read as follows:

1-26 (b) The Department of Aging and Disability Services and the
 1-27 Department of State Health Services also include community services
 1-28 operated by those departments and the following facilities, as
 1-29 appropriate:

- 1-30 (1) the central office of each department;
- 1-31 (2) the Austin State Hospital;
- 1-32 (3) the Big Spring State Hospital;
- 1-33 (4) the Kerrville State Hospital;
- 1-34 (5) the Rusk State Hospital;
- 1-35 (6) the San Antonio State Hospital;
- 1-36 (7) the Terrell State Hospital;
- 1-37 (8) the North Texas State Hospital;
- 1-38 (9) the Abilene State Supported Living Center;
- 1-39 (10) the Austin State Supported Living Center;
- 1-40 (11) the Brenham State Supported Living Center;
- 1-41 (12) the Corpus Christi State Supported Living Center;
- 1-42 (13) the Denton State Supported Living Center;
- 1-43 (14) the Lubbock State Supported Living Center;
- 1-44 (15) the Lufkin State Supported Living Center;
- 1-45 (16) the Mexia State Supported Living Center;
- 1-46 (17) the Richmond State Supported Living Center;
- 1-47 (18) the San Angelo State Supported Living Center;
- 1-48 (19) the San Antonio State Supported Living Center;
- 1-49 (20) the El Paso State Supported Living Center;
- 1-50 (21) the Rio Grande State Center; ~~and~~
- 1-51 (22) the Waco Center for Youth; and
- 1-52 (23) the El Paso Psychiatric Center.

1-53 SECTION 2. Subchapter A, Chapter 552, Health and Safety
 1-54 Code, is amended by adding Section 552.0011 to read as follows:

1-55 Sec. 552.0011. DEFINITIONS. In this chapter:

- 1-56 (1) "Commission" means the Health and Human Services
 1-57 Commission.
- 1-58 (2) "Department" means the Department of State Health
 1-59 Services.
- 1-60 (3) "Direct care employee" means a state hospital

2-1 employee who provides direct delivery of services to a patient.
2-2 (4) "Direct supervision" means supervision of the
2-3 employee by the employee's supervisor with the supervisor
2-4 physically present and providing the employee with direction and
2-5 assistance while the employee performs his or her duties.
2-6 (5) "Executive commissioner" means the executive
2-7 commissioner of the Health and Human Services Commission.
2-8 (6) "Inspector general" means the Health and Human
2-9 Services Commission's office of inspector general.
2-10 (7) "Patient" means an individual who is receiving
2-11 voluntary or involuntary mental health services at a state
2-12 hospital.
2-13 (8) "State hospital" means a hospital operated by the
2-14 department primarily to provide inpatient care and treatment for
2-15 persons with mental illness.
2-16 SECTION 3. Chapter 552, Health and Safety Code, is amended
2-17 by adding Subchapters C and D to read as follows:
2-18 SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT RELATING TO STATE
2-19 HOSPITALS
2-20 Sec. 552.051. REPORTS OF ILLEGAL DRUG USE; POLICY. The
2-21 executive commissioner shall adopt a policy requiring a state
2-22 hospital employee who knows or reasonably suspects that another
2-23 state hospital employee is illegally using or under the influence
2-24 of a controlled substance, as defined by Section 481.002, to report
2-25 that knowledge or reasonable suspicion to the superintendent of the
2-26 state hospital.
2-27 Sec. 552.052. STATE HOSPITAL EMPLOYEE TRAINING.
2-28 (a) Before a state hospital employee begins to perform the
2-29 employee's duties without direct supervision, the department shall
2-30 provide the employee with competency training and a course of
2-31 instruction about the general duties of a state hospital employee.
2-32 Upon completion of such training and instruction, the department
2-33 shall evaluate the employee for competency. The department shall
2-34 ensure the basic state hospital employee competency course focuses
2-35 on:
2-36 (1) the uniqueness of the individuals the state
2-37 hospital employee serves;
2-38 (2) techniques for improving quality of life for and
2-39 promoting the health and safety of individuals with mental illness;
2-40 and
2-41 (3) the conduct expected of state hospital employees.
2-42 (b) The department shall ensure the training required by
2-43 Subsection (a) provides instruction and information regarding
2-44 topics relevant to providing care for individuals with mental
2-45 illness, including:
2-46 (1) the general operation and layout of the state
2-47 hospital at which the person is employed, including armed intruder
2-48 lockdown procedures;
2-49 (2) an introduction to mental illness;
2-50 (3) an introduction to substance abuse;
2-51 (4) an introduction to dual diagnosis;
2-52 (5) the rights of individuals with mental illness who
2-53 receive services from the department;
2-54 (6) respecting personal choices made by patients;
2-55 (7) the safe and proper use of restraints;
2-56 (8) recognizing and reporting:
2-57 (A) evidence of abuse, neglect, and exploitation
2-58 of individuals with mental illness;
2-59 (B) unusual incidents;
2-60 (C) reasonable suspicion of illegal drug use in
2-61 the workplace;
2-62 (D) workplace violence; or
2-63 (E) sexual harassment in the workplace;
2-64 (9) preventing and treating infection;
2-65 (10) first aid;
2-66 (11) cardiopulmonary resuscitation;
2-67 (12) the Health Insurance Portability and
2-68 Accountability Act of 1996 (Pub. L. No. 104-191); and
2-69 (13) the rights of state hospital employees.

3-1 (c) In addition to the training required by Subsection (a)
 3-2 and before a direct care employee begins to perform the direct care
 3-3 employee's duties without direct supervision, the department shall
 3-4 provide the direct care employee with training and instructional
 3-5 information regarding implementation of the interdisciplinary
 3-6 treatment program for each patient for whom the direct care
 3-7 employee will provide direct care, including the following topics:
 3-8 (1) prevention and management of aggressive or violent
 3-9 behavior;
 3-10 (2) observing and reporting changes in behavior,
 3-11 appearance, or health of patients;
 3-12 (3) positive behavior support;
 3-13 (4) emergency response;
 3-14 (5) person-directed plans;
 3-15 (6) self-determination; and
 3-16 (7) trauma-informed care.

3-17 (d) In addition to the training required by Subsection (c),
 3-18 the department shall provide, in accordance with the specialized
 3-19 needs of the population being served, a direct care employee with
 3-20 training and instructional information as necessary regarding:
 3-21 (1) seizure safety;
 3-22 (2) techniques for:
 3-23 (A) lifting;
 3-24 (B) positioning; and
 3-25 (C) movement and mobility;
 3-26 (3) working with aging patients;
 3-27 (4) assisting patients:
 3-28 (A) who have a visual impairment;
 3-29 (B) who have a hearing deficit; or
 3-30 (C) who require the use of adaptive devices and
 3-31 specialized equipment;
 3-32 (5) communicating with patients who use augmentative
 3-33 and alternative devices for communication;
 3-34 (6) assisting patients with personal hygiene;
 3-35 (7) recognizing appropriate food textures;
 3-36 (8) using proper feeding techniques to assist patients
 3-37 with meals; and
 3-38 (9) physical and nutritional management plans.

3-39 (e) The executive commissioner shall adopt rules that
 3-40 require a state hospital to provide refresher training courses to
 3-41 employees at least annually, unless the department determines in
 3-42 good faith and with good reason a particular employee's performance
 3-43 will not be adversely affected in the absence of such refresher
 3-44 training.

3-45 Sec. 552.053. INFORMATION MANAGEMENT, REPORTING, AND
 3-46 TRACKING SYSTEM. The department shall develop an information
 3-47 management, reporting, and tracking system for each state hospital
 3-48 to provide the department with information necessary to monitor
 3-49 serious allegations of abuse, neglect, or exploitation.

3-50 Sec. 552.054. RISK ASSESSMENT PROTOCOLS. The department
 3-51 shall develop risk assessment protocols for state hospital
 3-52 employees for use in identifying and assessing possible instances
 3-53 of abuse or neglect.

3-54 SUBCHAPTER D. INSPECTOR GENERAL DUTIES

3-55 Sec. 552.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH
 3-56 CERTAIN INVESTIGATIONS. The inspector general shall employ and
 3-57 commission peace officers for the purpose of assisting a state or
 3-58 local law enforcement agency in the investigation of an alleged
 3-59 criminal offense involving a patient of a state hospital. A peace
 3-60 officer employed and commissioned by the inspector general is a
 3-61 peace officer for purposes of Article 2.12, Code of Criminal
 3-62 Procedure.

3-63 Sec. 552.102. SUMMARY REPORT. (a) The inspector general
 3-64 shall prepare a summary report for each investigation conducted
 3-65 with the assistance of the inspector general under this subchapter.
 3-66 The inspector general shall ensure that the report does not contain
 3-67 personally identifiable information of an individual mentioned in
 3-68 the report.

3-69 (b) The summary report must include:

4-1 (1) a summary of the activities performed during an
 4-2 investigation for which the inspector general provided assistance;
 4-3 (2) a statement regarding whether the investigation
 4-4 resulted in a finding that an alleged criminal offense was
 4-5 committed; and
 4-6 (3) a description of the alleged criminal offense that
 4-7 was committed.

4-8 (c) The inspector general shall deliver the summary report
 4-9 to the:

4-10 (1) executive commissioner;
 4-11 (2) commissioner of state health services;
 4-12 (3) commissioner of the Department of Family and
 4-13 Protective Services;
 4-14 (4) State Health Services Council;
 4-15 (5) governor;
 4-16 (6) lieutenant governor;
 4-17 (7) speaker of the house of representatives;
 4-18 (8) standing committees of the senate and house of
 4-19 representatives with primary jurisdiction over state hospitals;
 4-20 (9) state auditor; and
 4-21 (10) alleged victim or the alleged victim's legally
 4-22 authorized representative.

4-23 (d) A summary report regarding an investigation is subject
 4-24 to required disclosure under Chapter 552, Government Code. All
 4-25 information and materials compiled by the inspector general in
 4-26 connection with an investigation are confidential, not subject to
 4-27 disclosure under Chapter 552, Government Code, and not subject to
 4-28 disclosure, discovery, subpoena, or other means of legal compulsion
 4-29 for their release to anyone other than the inspector general or the
 4-30 inspector general's employees or agents involved in the
 4-31 investigation, except that this information may be disclosed to the
 4-32 Department of Family and Protective Services, the office of the
 4-33 attorney general, the state auditor's office, and law enforcement
 4-34 agencies.

4-35 Sec. 552.103. ANNUAL STATUS REPORT. (a) The inspector
 4-36 general shall prepare an annual status report of the inspector
 4-37 general's activities under this subchapter. The annual report may
 4-38 not contain personally identifiable information of an individual
 4-39 mentioned in the report.

4-40 (b) The annual status report must include information that
 4-41 is aggregated and disaggregated by individual state hospital
 4-42 regarding:

4-43 (1) the number and type of investigations conducted
 4-44 with the assistance of the inspector general;
 4-45 (2) the number and type of investigations involving a
 4-46 state hospital employee;
 4-47 (3) the relationship of an alleged victim to an
 4-48 alleged perpetrator, if any;
 4-49 (4) the number of investigations conducted that
 4-50 involve the suicide, death, or hospitalization of an alleged
 4-51 victim; and
 4-52 (5) the number of completed investigations in which
 4-53 commission of an alleged offense was confirmed or unsubstantiated
 4-54 or in which the investigation was inconclusive, and a description
 4-55 of the reason that allegations were unsubstantiated or the
 4-56 investigation was inconclusive.

4-57 (c) The inspector general shall submit the annual status
 4-58 report to the:

4-59 (1) executive commissioner;
 4-60 (2) commissioner of state health services;
 4-61 (3) commissioner of the Department of Family and
 4-62 Protective Services;
 4-63 (4) State Health Services Council;
 4-64 (5) Family and Protective Services Council;
 4-65 (6) governor;
 4-66 (7) lieutenant governor;
 4-67 (8) speaker of the house of representatives;
 4-68 (9) standing committees of the senate and house of
 4-69 representatives with primary jurisdiction over state hospitals;

5-1 (10) state auditor; and
 5-2 (11) comptroller.

5-3 (d) An annual status report submitted under this section is
 5-4 public information under Chapter 552, Government Code.

5-5 Sec. 552.104. RETALIATION PROHIBITED. The department or a
 5-6 state hospital may not retaliate against a department employee, a
 5-7 state hospital employee, or any other person who in good faith
 5-8 cooperates with the inspector general under this subchapter.

5-9 SECTION 4. Section 261.101, Family Code, is amended by
 5-10 adding Subsection (b-1) and amending Subsection (c) to read as
 5-11 follows:

5-12 (b-1) In addition to the duty to make a report under
 5-13 Subsection (a) or (b), a person or professional shall make a report
 5-14 in the manner required by Subsection (a) or (b), as applicable, if
 5-15 the person or professional has cause to believe that an adult was a
 5-16 victim of abuse or neglect as a child and the person or professional
 5-17 determines in good faith that disclosure of the information is
 5-18 necessary to protect the health and safety of:

5-19 (1) another child; or

5-20 (2) an elderly or disabled person as defined by
 5-21 Section 48.002, Human Resources Code.

5-22 (c) The requirement to report under this section applies
 5-23 without exception to an individual whose personal communications
 5-24 may otherwise be privileged, including an attorney, a member of the
 5-25 clergy, a medical practitioner, a social worker, a mental health
 5-26 professional, an employee or member of a board that licenses or
 5-27 certifies a professional, and an employee of a clinic or health care
 5-28 facility that provides reproductive services.

5-29 SECTION 5. Subchapter F, Chapter 411, Government Code, is
 5-30 amended by adding Section 411.1103 to read as follows:

5-31 Sec. 411.1103. ACCESS TO CRIMINAL HISTORY RECORD
 5-32 INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES. (a) The
 5-33 Department of State Health Services is entitled to obtain from the
 5-34 department criminal history record information maintained by the
 5-35 department that relates to a person:

5-36 (1) who is:

5-37 (A) an applicant for employment at a state
 5-38 hospital;

5-39 (B) an employee of a state hospital;

5-40 (C) a person who contracts or may contract to
 5-41 provide goods or services to the Department of State Health
 5-42 Services at a state hospital or an employee of or applicant for
 5-43 employment with that person;

5-44 (D) a volunteer with a state hospital; or

5-45 (E) an applicant for a volunteer position with a
 5-46 state hospital; and

5-47 (2) who would be placed in direct contact with a
 5-48 patient at a state hospital.

5-49 (b) Criminal history record information obtained by the
 5-50 Department of State Health Services under this section may not be
 5-51 released or disclosed to any person except:

5-52 (1) on court order;

5-53 (2) with the consent of the person who is the subject
 5-54 of the criminal history record information;

5-55 (3) for purposes of an administrative hearing held by
 5-56 the Department of State Health Services concerning the person who
 5-57 is the subject of the criminal history record information; or

5-58 (4) as provided by Subsection (c).

5-59 (c) The Department of State Health Services is not
 5-60 prohibited from releasing criminal history record information
 5-61 obtained under this section to the person who is the subject of the
 5-62 criminal history record information.

5-63 (d) Subject to Section 411.087, the Department of State
 5-64 Health Services is entitled to:

5-65 (1) obtain through the Federal Bureau of Investigation
 5-66 criminal history record information maintained or indexed by that
 5-67 bureau that pertains to a person described by Subsection (a); and

5-68 (2) obtain from any other criminal justice agency in
 5-69 this state criminal history record information maintained by that

6-1 criminal justice agency that relates to a person described by
6-2 Subsection (a).

6-3 (e) This section does not prohibit the Department of State
6-4 Health Services from obtaining and using criminal history record
6-5 information as provided by other law.

6-6 SECTION 6. Subsection (c), Section 48.051, Human Resources
6-7 Code, is amended to read as follows:

6-8 (c) The duty imposed by Subsections (a) and (b) applies
6-9 without exception to a person whose knowledge concerning possible
6-10 abuse, neglect, or exploitation is obtained during the scope of the
6-11 person's employment or whose professional communications are
6-12 generally confidential, including an attorney, clergy member,
6-13 medical practitioner, social worker, employee or member of a board
6-14 that licenses or certifies a professional, and mental health
6-15 professional.

6-16 SECTION 7. Section 552.011, Health and Safety Code, is
6-17 repealed.

6-18 SECTION 8. Not later than December 1, 2013, the executive
6-19 commissioner of the Health and Human Services Commission shall
6-20 adopt rules necessary to implement Subchapter C, Chapter 552,
6-21 Health and Safety Code, as added by this Act.

6-22 SECTION 9. (a) Not later than May 1, 2014, the Health and
6-23 Human Services Commission's office of inspector general shall begin
6-24 employing and commissioning peace officers as required by Section
6-25 552.101, Health and Safety Code, as added by this Act.

6-26 (b) Not later than January 1, 2014, the Department of State
6-27 Health Services shall develop the training required by Section
6-28 552.052, Health and Safety Code, as added by this Act.

6-29 (c) The Department of State Health Services shall ensure
6-30 that each state hospital employee receives the training required by
6-31 Section 552.052, Health and Safety Code, as added by this Act,
6-32 regardless of when the employee was hired, not later than September
6-33 1, 2014.

6-34 SECTION 10. Section 411.1103, Government Code, as added by
6-35 this Act, applies only to background and criminal history checks
6-36 performed on or after the effective date of this Act.

6-37 SECTION 11. If before implementing any provision of this
6-38 Act a state agency determines that a waiver or authorization from a
6-39 federal agency is necessary for implementation of that provision,
6-40 the agency affected by the provision shall request the waiver or
6-41 authorization and may delay implementing that provision until the
6-42 waiver or authorization is granted.

6-43 SECTION 12. This Act takes effect immediately if it
6-44 receives a vote of two-thirds of all the members elected to each
6-45 house, as provided by Section 39, Article III, Texas Constitution.
6-46 If this Act does not receive the vote necessary for immediate
6-47 effect, this Act takes effect September 1, 2013.

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